



## WESTERN AUSTRALIA.

ANNO VICESIMO TERTIO

## VICTORIÆ REGINÆ.

NO. XI.

AN ORDINANCE to consolidate and amend the Laws prohibiting the Distillation of Ardent Spirits in Western Australia, and for repealing a certain Ordinance relating thereto.

WHEREAS an Ordinance passed in the fourth Year of the Reign of Her present Majesty Queen Victoria, intituled *An Act to render illegal the Distillation of Ardent Spirits in this Colony after the 18th of March, 1841*; And whereas it is expedient to repeal the same, and to make further Provision for the Prevention of Distillation of Spirits in the said Colony; Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies by and with the Advice and Consent of the Legislative Council thereof:—

I. THAT from and after the Passing of this Ordinance the said recited Ordinance shall be, and the same is hereby repealed save and except always as to Offences committed, and Matters done before the passing of this Ordinance, which said Offences, Matters and Things shall be dealt with respectively as if this present Ordinance had not been passed. 4th Victoria No. 7, repealed

II. THAT from and after the Passing of this Ordinance it shall not be lawful for any Person or Persons to carry on the Business of a Distiller, or a Rectifier or Compounder of Spirits, or to have, keep, or make use of any Still or other Utensil for distilling Spirits, or for rectifying or compounding Spirits save as next hereinafter excepted in any Place or No person shall distill spirits under a penalty of from £100 to £500 and forfeiture of spirits.

23rd Vict. No. 11.

Part of the said Colony under a Penalty of not less than One Hundred Pounds nor more than Five Hundred Pounds, to be recovered as hereinafter directed.

Colonial Treasurer may license Apothecary, Chemist and Druggist to distill for purposes of their trade.

III. THAT it shall and may be lawful for the Colonial Treasurer for the Time being to issue a License, free of all Charge, to any Apothecary, Chemist or Druggist applying for the same to keep and use on his Premises a Still of not more than Five Gallons Content for the Purposes of his Trade only; Provided that every Person wishing to keep such Still shall notify his Intention so to do to the Colonial Treasurer for the Time being, who shall thereupon require such Person to give Bond, with Two sufficient Sureties in the Sum of Two Hundred Pounds that he will not make Use of such Still, or suffer it to be made Use of except for the Preparation of Medicines, or other Articles required *bonâ fide* for medical Purposes; and every such Person found to have in his Possession any Still without having entered into such Bond and obtained such License shall forfeit and pay not less than One Hundred Pounds nor more than Five Hundred Pounds.

Officers may seize stills.

IV. THAT all and every Still and Still-Head, Worms, and all Utensils, or Spirits, Cordials or Compounds manufactured in the said Colony, and found on any Premises or Place, except as hereinbefore excepted in the Case of Apothecaries, Chemists and Druggists, shall and may be seized by any Officer of Customs, Police Constable or other Person appointed under the Hand of the said Governor, and forfeited.

Search for stills, &c., may be made.

V. THAT it shall be lawful for any Officer of Customs, Police Constable, or any other Person or Persons authorized by the Governor as aforesaid having reasonable Grounds to believe that Spirits, Cordials, or Compounds, manufactured in the said Colony, or that any Still, Still-Head, Worm or Utensil are kept or concealed in any House or Place in the said Colony, or its Dependencies, to enter into such House or Place in the Day Time, with a Writ of Assistance under the Hand of the Commissioner of the Civil Court, and the Seal thereof, and if not himself a Peace Officer, accompanied by a Peace Officer, and search for, and seize any such Spirits, Cordials, Compound or any Still, Still-Head, Worm or Utensil found therein, and to deposit the same until claimed or sold at the Custom House or other Place appointed by the Governor for that purpose.

Claims to be made within one month.

VI. THAT all Claims for Spirits, Stills, and other Property seized as forfeited, under the Provisions of this Ordinance shall be lodged within One Month after the Seizure shall be made, with the Colonial Treasurer for the Time being; and all Spirits, Stills and other Property, seized under the Provisions of this Ordinance, shall be considered as condemned, unless claimed within One Month after the same shall have been seized, and shall be sold by public Auction, and the proceeds of such Sale distributed as hereinafter directed.

Spirits sold in one month.

23rd Vict. No. 11.

VII. THAT Every Person who shall sell or dispose of, or who shall offer to sell or dispose of any Quantity of illicit Spirits, Cordials or Compounds manufactured in the said Colony shall be liable to a penalty of One Hundred Pounds, and Forfeiture of such illicit Spirits, Cordials or Compounds; and every Person who shall knowingly purchase any such illicit Spirits Cordials or Compounds, shall be liable to a similar Penalty of One Hundred Pounds together with Forfeiture of the Spirits, Cordials or Compounds so purchased.

Any person selling or purchasing illicit spirits liable to a penalty of £100.

VIII. THAT all Fines, Forfeitures and Penalties imposed by this Ordinance may be recovered by Information in a summary Way before any Two or more Justices of the Peace in Petty Sessions, or may be recovered before the Commissioner of the Civil Court at the Instance of any superior Officer of Customs or Person or Persons appointed by the Governor for that Purpose; and that Actions for the Recovery of the same shall and may be instituted in the Name of some superior Officer of Customs, or Her Majesty's Advocate General of the said Colony; and if any Question should arise, whether any Person is an Officer of Customs as aforesaid, *viva voce* Evidence may be given of such Fact, and shall be deemed legal and sufficient Evidence: Provided and it shall be lawful for any Justice of the Peace to summon the Party against whom any Information is exhibited under the Provisions of this Ordinance for the recovery of any Penalty or Forfeiture before Two Justices of the Peace, and such summons directed to such Party being left at his or her last known Place of Residence, or place where he or she has usually lodged or boarded shall be deemed to have been sufficiently served, and upon the Appearance or Default of such Party, and Examination of the Matters, and upon Due Proof that a Penalty has been incurred by such Party, or that Spirits, Still or other Property are liable to Forfeiture under this Ordinance, the Justices of the Peace before whom such Party shall be summoned to appear as aforesaid, may convict such Party in such Penalty, and may condemn the said Spirits, Still or other Property to be sold, and the Proceeds of such Sale to be distributed in Manner hereinafter provided.

Fines, forfeitures, and penalties, how to be recovered.

IX. THAT if any Spirits shall be seized as and for having been manufactured in this Colony, and any Dispute shall arise whether the same were manufactured out of the Colony, the Proof thereof shall be on the Owner or Claimer, and not on the Officer who shall seize and stop the same.

Burden of Proof to lie on Parties.

X. THAT no Claim to any Spirits, Still, or other Property seized under this Ordinance, and returned into any Courts of Petty Sessions for Adjudication shall be admitted; and that no Appearance shall be permitted to be entered to any Information or other Proceeding filed for the Forfeiture of any Spirits, Still, or other Property seized for Forfeiture under this Ordinance, unless such Claim or Appearance is entered in the name of the Owner or Owners, Proprietor or Proprietors of such Spirits,

How to claim seized spirits &c.

23rd Vict. No. 11.

Still or other Property so seized, describing the Place of Residence, and the Business or Profession of such Person or Persons, and Oath shall be made before the Commissioner of the Civil Court, or before One of the Justices of the Bench of Magistrates, before whom any Cause of Forfeiture shall be tried for Spirits, Still or other Property seized as forfeited under this Ordinance, that the Spirits, Still or other property seized was or were, really and truly, the Property of him, her or them, at the Time of such Seizure; and on Failure thereof the Spirits, Still or other Property shall be absolutely condemned, and Judgment be entered thereon by Default, according to the usual Method of Proceedings of the Court in the same Manner as if no Appearance had been entered thereto; and every Person who shall be convicted of making or taking a false Oath to any of the Facts hereinbefore directed, or required to be sworn to, shall be deemed guilty of Perjury, and punished accordingly.

Claimant to enter into recognizance to answer costs.

XI. THAT upon Entry of any Claim to any Spirits or other property seized for any Cause of Forfeiture, or of any Appearance to any Information filed for such Forfeiture, the Person or Persons who shall enter such Claim or Appearance, if such Claimant shall reside within the Colony, shall be bound by a Recognizance (to be entered into before the Commissioner of the Civil Court or One of the Justices of the Peace before whom the said Cause or Matter is to be inquired into) with two Sufficient Sureties in the Penalty of One Hundred Pounds to answer and pay the Costs occasioned by such Claim or Appearance, and if the Owner or Proprietor shall not reside within the said Colony then and in such Case the Agent, Attorney or Solicitor by whose Directions such Claim or Appearance shall be entered shall in like Manner be bound with Two Sufficient Sureties in like Penalty to pay the Costs occasioned by such Claim or Appearance.

What shall be proof of appointment of Officer in proceedings under this Ordinance.

XII. THAT in Case of any Information or Proceeding under this Ordinance, the Averment therein that the Person prosecuting such Information or Proceeding is a superior Officer of the Customs shall be sufficient proof of the appointment of such superior Officer of the Customs, without Proof of the Appointment of such Officer of the Customs, unless the Defendant shall in such Case prove to the contrary.

Officers deemed competent witnesses.

XIII. THAT any and every Officer of the Customs, and every Person acting in his or their Aid or Assistance shall be deemed a competent Witness upon the Trial of any such Suit or Information on Account of any Seizure or Penalty as aforesaid, notwithstanding such Officer of Customs or other Person may be entitled to the Whole or any Part of such Seizure or Penalty, or to any Reward upon Conviction of the Party charged in such Suit or Information.

Punishment if fine is not paid.

XIV. THAT if in any Suit or Action brought before the Civil Court, or any Two or more Justices of the Peace as aforesaid for the Recovery of any Fines or Penalties imposed by this Ordinance the Party or Parties

23rd Vict., No. 11.

shall be convicted or sentenced to pay such Fine or Penalty, it shall be lawful for such Court or Justices to award and sentence the said Party or Parties to be imprisoned, with or without hard labour, for a Period not less than three nor exceeding Eighteen Months in Case the said Fine or Penalty be not paid within the Time limited by the said Court or Justices.

XV. THAT it shall and may be lawful for the said Governor to make such Rules and Regulations as he may think necessary to carry the Provisions of this Ordinance into Effect, and to appoint such Officers and other Persons, for that Purpose, as he may deem fit and proper.

Governor may make rules.

XVI. THAT every Action against any Officer of Customs or other Person or Persons so appointed by the Governor as aforesaid for Anything done in the Exercise of his Office, shall be brought within Three Calendar Months after the Cause thereof arose.

Actions against Officer to be brought within three months.

XVII. THAT in Case any Information or Suit shall be brought to Trial on Account of any Seizure made under this Ordinance, and a Verdict shall be found for the claimant thereof, and the Judge or Court before whom the Cause shall have been tried shall certify upon the Record that there was probable Cause of Seizure, the Claimant shall not be entitled to any Costs of Suit, nor shall the Person who made such Seizure be liable to any Action, Indictment, Information or other Suit or Prosecution on account of such Seizure; and if any Action, Indictment, Information or other Suit or Prosecution shall be brought to Trial against any Person on account of such Seizure, wherein a Verdict shall be given against such Defendant, the Plaintiff, besides the Things Seized or the Value thereof, shall not be entitled to more than Two Pence Damages, nor to any Costs of Suit, nor shall the Defendant in such Prosecution be fined more than One Shilling.

Judge may certify probable cause of seizure.

XVIII. THAT in any Action, if the Judge or Court before whom such Action shall be tried shall certify upon the Record that the Defendant or Defendants in such Actions made such Seizure upon probable Cause, then the Plaintiff in such Action shall not be entitled to more than Two Pence Damages, nor to any Costs of Suit.

Limitation of damages when Judge certifies probable cause of seizure.

XIX. THAT every Person who shall give, offer, or promise to give any Bribe, Recompense or Reward, or make any collusive Agreement with any such Officer as aforesaid to induce him in any way to neglect his Duty or to conceal or connive at any Act whereby any of the Provisions of this Ordinance may be evaded, every such Person shall, whether the Offer be accepted or performed or not, forfeit the sum of Two Hundred Pounds.

Bribing an officer, penalty £200.

XX. THAT all Fines, Penalties and Forfeitures, recovered under this Ordinance, shall be paid and applied (after deducting the Charges of Prosecution and other contingent Expenses) as follows, that is to say, One Moiety to the Colonial Treasurer to the Use of Her Majesty, her Heirs and Successors for the Public Uses of the said Colony, and

Distribution of forfeitures and penalties.

23rd Vict. No. 11.

in Support of the Government thereof, and the other moiety to or among the Informer or Informers the Seizer or Seizers as the Governor shall from Time to Time direct.

Actions commenced in one year.

XXI. THAT Actions or Suits for the Recovery of any of the Penalties or Forfeitures imposed by this Ordinance may be commenced and prosecuted at any Time within One Year after the Offence committed by Reason whereof such Penalty or Forfeiture shall be incurred.

Limit six months.

XXII. THAT Sections F, G and I of "The Shortening Ordinance, 1853," shall be incorporated with and taken to form Part of this Ordinance, to all Intents and Purposes, and in as full and ample a Manner as if the said Sections had been introduced and fully set forth herein.

A. E. KENNEDY,

GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council  
this 18th Day of November, 1859.*

HENRY WAKEFORD,  
Clerk of the Council.

**L.S.**